No. 77-1493

In the Supreme Court of the United States

OCTOBER TERM, 1977

GLADSTONE REALTORS, et al.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,
Respondents.

ROBERT A. HINTZE REALTORS, et al.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,
Respondents.

On Petition For A Writ of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 9-21) is reported at 569 F.2d 1013 (7th Cir. 1978). The opinions of the District Courts (Pet. App. 1-8) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1978. The petition for a writ of certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether homeowners, their village, or a fair housing organization have standing to sue under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.*) or the Civil Rights Act of 1866 (42 U.S.C. § 1982) to prevent illegal racial steering directed against their community by realtors and their agents.

STATUTES INVOLVED

The pertinent constitutional and statutory provisions are set forth at Pet. 2-8.

STATEMENT

On October 24, 1975, respondents Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp, Joyce Perry, the Village of Bellwood, and the Leadership Council for Metropolitan Open Communities filed two complaints charging respectively, that petitioners Gladstone Realtors and six of its salespersons and Robert A. Hintze Realtors and three of its salespersons had engaged in the practice of racial steering in violation of the federal fair housing laws. Title VIII of the Civil Rights

Act of 1968 (the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. §1982). Specifically, petitioners were accused of illegally influencing the choice of prospective homebuyers on the basis of race by discouraging blacks from purchasing homes in predominantly white areas and by discouraging whites from purchasing homes in integrated, "changing", or predominantly black neighborhoods in a designated area of Bellwood, Illinois. Bellwood is a suburb of Chicago to which a number of blacks, such as respondent Joyce Perry, have moved in recent years. As one of the few municipalities in its area with a significant and growing black population, Bellwood has become a "target" community to which realtors and their sales personnel direct black homeseekers who want to live in the western suburbs. Meanwhile, according to reports received by the Village of Bellwood, area realtors steer white homeseekers away from Bellwood to near-by communities such as Berkeley, Westchester, and Hillside. Within Bellwood, itself, certain neighborhoods were being "sold black," while homes in the western part of the Village were only being shown to whites.

Expressing a desire to remain in a stable, integrated community, a number of Bellwood residents, both white and black, asked their Village officials to determine which realtors were racially changing their community and to stop these racial steering and other discriminatory practices before substantial parts of Bellwood were resegregated. These residents wanted to avoid the fear, panic and hardship that they knew often accompanied rapid racial change in a community, where "if the real estate industry is allowed to operate unchecked, the pace of racial transi-

tion will be manipulated in a way that will irreparably distort any chance for normal and stable racial change.'"[1]

With the help of the Leadership Council and many of its own citizens, the Village responded by organizing and conducting an investigation of real estate practices in the Bellwood area in September of 1975. In the course of this investigation, several of the individual respondents and other volunteers acting as prospective homebuyers visited various real estate offices in order to ascertain whether a black prospect would be treated differently than a white prospect. 569 F.2d, at 1015. These "tests" showed that agents of petitioners Gladstone Realtors and Robert A. Hintze Realtors would discriminate between prospective homebuyers on the basis of their race: white and black prospects who asked for the same thing in terms of price, size, and general location were shown homes in different areas, with the blacks' housing choice often being limited

[1] *Zuch* v. *Hussey*, 394 F. Supp. 1028, 1034 (E.D. Mich. 1975). With respect to the effects of rapid racial change on a community and the role that realtors may play in that change, see also *id.*, at 1032-1034 and 1053-1055; *United States* v. *Bob Lawrence Realty, Inc.*, 474 F.2d 115, 124 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Brown* v. *State Realty Co.*, 304 F. Supp. 1236, 1240 (N.D. Ga. 1969); *United States* v. *Mitchell*, 355 F. Supp. 1004, 1005-1006 (N.D. Ga. 1971), *aff'd*, 474 F.2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Barrick Realty Co.* v. *City of Gary, Indiana*, 354 F. Supp. 126, 135 (N.D. Ind. 1973), *aff'd*, 491 F.2d 161 (7th Cir. 1974); *United States* v. *Real Estate One, Inc.*, 433 F. Supp. 1140, 1150 (E.D. Mich. 1977).

to eastern Bellwood alone or in some cases to Bellwood and other integrated or racially changing communities.[2]

As a result of this and similar evidence produced by Bellwood's investigation, the Village, six local homeowners, and the Leadership Council brought these suits under the federal fair housing laws to recover damages and to have petitioners' discriminatory practices declared illegal and enjoined. The individual respondents are four white residents of Bellwood, Illinois and two blacks, one a resident of Bellwood, the other a resident of neighboring Maywood, Illinois. 569 F.2d, at 1015. As homeowners in the area affected by petitioners' racial steering practices, these respondents alleged that Gladstone's and Hintze's illegal conduct denied them their right to select housing without regard to race and deprived them "of the social and professional benefits of living in an integrated society." 569 F.2d, at 1015. For its part, the Village of Bellwood alleged that it has been injured "by having the housing market

[2] For example, when Lonnie M. Randolph, a black, visited defendant Gladstone Realtors' office in Westchester and asked salesman Ted Wolnik for homes in the $30,000-$40,000 range, he was shown five house listings, all in the neighborhoods in eastern Bellwood where substantial numbers of blacks already lived (see Plaintiffs' Answers to Defendants' First Set of Interrogatories in *Gladstone*, Sales Audit Report Form of Lonnie M. Randolph (9/20/85))); when Edward B. Powell, who is white, visited the same office and made the same request, he was given five entirely different listings, all of which were in all-white neighborhoods in Westchester, southern Broadview, and western Bellwood (*id.* Sales Audit Report Form of Edward B. Powell (9/27/75)). The salesman with whom Powell dealt told him that "there are some areas of Bellwood he did not want to show us because they were bad areas. When asked why they were bad, he said they were integrated."

in [Bellwood] wrongfully and illegally manipulated to the economic and social detriment of the citizens of [Bellwood]." *Ibid.* Finally, the Leadership Council asserted that petitioners' steering practices interfered with its work of combatting housing discrimination in the Chicago area and required it to make substantial expenditures to investigate and eliminate those unlawful acts. *Ibid.*

In response to these complaints, petitioners filed motions to dismiss in both cases on November 17, 1975. While these motions were pending, both sides filed written interrogatories, requests for production of documents, and requests for admissions. Respondents answered these requests in both cases on April 2, 1976; petitioners, however, never responded to the discovery requests directed to them.

On July 7, 1976, petitioners filed motions for summary judgment in both cases. These motions, which were based in part on the interrogatory answers and admissions received from respondents, alleged that none of the respondents had standing to assert their claims under the federal fair housing laws because they were not actually in the market for new homes. On September 23, 1976, Judge Decker entered his Memorandum Opinion granting petitioners' motion in the *Gladstone* case and dismissing the cause. 569 F.2d, at 1015. On September 29, 1976, Judge Perry explicitly adopted Judge Decker's earlier opinion granting petitioners' motion for summary judgment and dismissed the *Hintze* case. *Ibid.*

The Court of Appeals reversed. It held that the thrust and rationale of this Court's decision in *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972) "plainly suggest that the individual plaintiffs and the Village of Bellwood have standing." 569 F.2d, at 1019.[3] The Court of Appeals noted that the allegations of the individual homeowners here were "virtually identical" to those that *Trafficante* had held were sufficient to establish standing under Title VIII. *Id.*, at 1016. With respect to the Village of Bellwood, the court pointed out that

> it is apparent that specific concrete injury with substantial nexus to the Village's status as a unit of government could be proved under these complaints. *See Flast* v. *Cohen*, 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them.

Id., at 1017.

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[3] The Court of Appeals affirmed the lower court's dismissal of the Leadership Council on the ground that the Council's commitment to fair housing in these cases was not sufficient to satisfy the Article III requirements for standing under such cases as *Sierra Club* v. *Morton*, 405 U.S. 727 (1972). This part of the Court of Appeal's decision conflicts with a number of other federal court decisions (*e.g.*, *Park View Heights Corporation* v. *City of Black Jack*, 467 F.2d 1208 1212-1213 (8th Cir. 1972)) and substantially extends the holding of *Sierra Club*, since the Leadership Council has alleged financial injury and not merely a general, abstract concern about fair housing in Bellwood. Nevertheless, since the Court of Appeals accorded standing to the individual homeowners and the Village of Bellwood here, the Leadership Council would not independently ask this Court to review its dismissal from these cases. If the petition for certiorari is granted, however, respondents respectfully request that review encompass the entire case, including the question of the Leadership Council's standing.

Finally, the Court of Appeals rejected the argument adopted by the Ninth Circuit in *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), *cert. denied*, 429 U.S. 859 (1976) that homeowners in an area where local realtors engage in racial steering cannot bring Title VIII complaint directly in federal court under 42 U.S.C. § 3612 without first filing a complaint with HUD under 42 U.S.C. § 3610. After careful consideration of the language, intent, and legislative history of Title VIII, the Seventh Circuit joined the numerous other federal courts throughout the country that have concluded that *TOPIC* was wrongly decided[4] and held that "there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612." 569 F.2d, at 1019. The Court of Appeals therefore remanded these cases to the District Courts for further proceedings.

[4] *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.*, 429 F.Supp. 486 (E.D. N.Y. 1977); *Fair Housing Council of Bergen County* v. *Eastern Bergen County Multiple Listing Service*, 422 F.Supp. 1071 (D. N.J. 1976); and *see Zuch* v. *Hussey*, 394 F.Supp. 1028 (E.D. Mich. 1975); *Village of Park Forest* v. *Fairfax Realty*, P-H Eq. Opp. Hsing Rptr. ¶13,699 (N.D. Ill. 1975) and P-H Eq. Opp. Hsing Rptr. ¶13,784 (N.D. Ill. 1976); *Heights Community Congress* v. *Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975).

ARGUMENT

The writ of certiorari should be denied, because the petition fails to suggest any special and important reason for review by the Supreme Court. The Court of Appeals' decision remanding these cases to the trial courts is not a final judgment. Its interpretation of Title VIII is in accord with this Court's decision in *Trafficante* v. *Metropolitan Life Insurance Co., supra*. In addition, the conflict between the Court of Appeals decision here and the Ninth Circuit's decision in *Topic* is not likely to have continuing significance, since *TOPIC's* erroneous analysis has been repudiated by a growing number of federal court decisions, making review by this Court unnecessary.

I.

THE CASE IS NOT RIPE FOR REVIEW.

The Supreme Court will not usually grant certiorari to review a nonfinal judgment, such as the Court of Appeal's decision here. *E.g., American Construction Co.* v. *Jacksonville, T. & K. R. Co.*, 148 U.S. 372, 384 (1893); *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) ("because the Court of Appeals remanded the case, it is not yet ripe for review by this Court.") All the Seventh Circuit has done is to block petitioners' efforts to prematurely end this litigation by summary judgment at a time when the ultimate factual issues—whether illegal racial steering has occurred and how respondents were injured thereby—are still very much in dispute. As the Court of Appeals noted, petitioners' argument "rings hollow in the light of defendants' refusal

to date to provide any of the discovery sought by plaintiffs." 569 F.2d, at 1016. By remanding these cases to the trial courts for further proceedings, the Court of Appeals has insured that there will be an opportunity to fully develop the factual record concerning petitioners' conduct and respondents' injuries. These matters are basic to any rational resolution of standing issues, and it would be unfortunate as well as unusual for this Court to deal with those issues by reviewing an interlocutory decision on the basis of such a one-sided and inadequate record.

II.

THE DECISION IS CORRECT.

A. Respondents Have Standing.

The complaints allege in substance that petitioners' discriminatory practices are resulting in unnaturally rapid racial change amounting to resegregation in the Bellwood area and that respondents are thus being deprived of the social, professional, and economic benefits of living in an integrated community. The Supreme Court has unanimously held that precisely this claim is "[i]ndividual injury or injury in fact" sufficient to satisfy the requirements of standing. *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972).

Respondents' allegation that the racial make-up of their community is being illegally changed by petitioners' steering practices satisfies both the constitutional and statutory requirements of standing. As homeowners in the affected area, respondents are being injured in a real and tangible way by petitioners' unlawful conduct and are not, as petitioners claim, merely the "indirect victims" of that conduct.

In addition to being deprived of their "*Trafficante*" right to live in an integrated community, respondents must also face the serious economic problems and other hardships that result when rapid racial change is engineered by local realtors. See, *e.g.*, *Zuch* v. *Hussey*, 394 F. Supp. 1028, 1032-1034 (E.D. Mich. 1975); *Shannon* v. *HUD*, 436 F.2d 809, 818 (3rd Cir. 1970). Thus, the Court of Appeals correctly held that respondents have standing.

Since respondents have alleged injuries that are concrete and tangible and since a federal court can provide relief that would redress those injuries,[5] the "minimum constitutional" requirements of standing under Article III have been met. See *Warth* v. *Seldin*, 422 U.S. 490, 498-499 (1975); *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976). Indeed, even the District Courts assumed as much when they decided the cases on the bases of their interpretation of Title VIII, since that issue would not have been reached unless the "threshold requirement imposed by Art. III" had been satisfied. *O'Shea* v. *Littleton*, 414 U.S. 488, 493 (1974); see also 569 F.2d, at 1016, n.2.

Since respondents' claims are brought under specific statutory provisions, the issue of their standing to assert those claims depends on whether they are "arguably

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[5] *See, e.g., Zuch* v. *Hussey, supra* (enjoining racial steering under Title VIII); *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.*, 429 F.Supp. 486, 489 (E.D. N.Y. 1977) ("a court order enjoining the alleged racial steering would relieve this injury by terminating a major disruptive influence on the racial and financial stability of Wheatley Heights."); *see generally Louisiana* v. *United States*, 380 U.S. 145, 154 (1965); *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229, 239 (1969).

within the zone of interests to be protected'' by the federal fair housing laws. *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U.S. 150, 153 (1970); *Barlow* v. *Collins,* 397 U.S. 159, 163 (1970). There can be no question that the allegation that petitioners have engaged in racial steering by directing similarly-situated white and black homeseekers to different neighborhoods states a cause of action under Title VIII. *E.g., Zuch* v. *Hussey, supra; Fair Housing Council of Bergen County* v. *Eastern Bergen County Multiple Listing Service,* 422 F.Supp. 1071, 1074-1076 (D. N.J. 1976) (both Title VIII and §1982 violated); *Moore* v. *Townsend,* 525 F.2d 482 (7th Cir. 1975) (both Title VIII and §1982 violated); see also Note, ''Racial Steering: The Real Estate Broker and Title VIII,'' 85 Yale L.J. 808, 818-821 (1976). In holding that racial steering violates the fair housing laws, federal courts have recognized that the intent of these laws is not merely to prevent discriminatory refusals to deal, but is to foster integrated communities for the benefit of both white and black residents and homeseekers. Congress declared in Title VIII that it is ''the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States'' (42 U.S.C. §3601), and the Supreme Court has made clear that the ''language of the Act is broad and inclusive'' and should be given a ''generous construction'' to effectuate its purpose of replacing ''the ghettos by truly integrated and balanced living patterns.'' *Trafficante* v. *Metropolitan Life Insurance Co., supra,* 409 U.S., at 209-212. As this Court pointed out in *Trafficante,* ''[t]he person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community.' '' *Id.,* at 211; see also *Linmark Associates, Inc.* v. *Township of Willingboro,* 97 S.Ct. 1614, 1619 (1977). Thus,

Trafficante held that Congress intended to define standing to sue under Title VIII as broadly as is permitted by Article III. 205 U.S., at 209.

Residence of specific neighborhoods or communities whose racial make-up is being fashioned by discriminatory housing practices are subject to the same injuries and assert the same interests as did the plaintiffs in *Trafficante.* ''The real issue in this litigation is whether the real estate industry should be allowed to enter into the process and, for commercial advantage, artificially hasten or at least accelerate the rate of population turnover and the pace of racial change.'' *Zuch* v. *Hussey, supra,* 394 F.Supp., at 1033. Respondents must be allowed to raise this issue here, for it is *their* right to select and maintain their present homes without regard to racial considerations that petitioners are violating. The fact that others seeking homes may also be victims of petitioners' practices does not reduce the present homeowners' interests in residing in a stable, integrated neighborhood and in not being ''panicked'' out of Bellwood. The residents of this area should not be made to depend on suits by third parties who have actually been steered for protection of their rights, particularly since the actual homeseekers may not know they have been steered or may not have the interest or resources to fight petitioners' discriminatory practices.

Respondents' claim is that the racial steering practices engaged in by local realtors will resegregate and destroy the stable, integrated community in which they presently live. This constitutes a direct, real, and serious injury to these homeowners. Their interests are precisely those that Title VIII was intended to advance. Thus, the District Courts' conclusion that respondents ''only claim to have

suffered indirect injury from the action of the defendants" (Pet. App. 3) was properly reversed by the Court of Appeals.

B. Standing Under §3612 Is As Broad As Standing Under §3610.

Title VIII provides two ways for private plaintiffs to bring housing discrimination complaints in court: they may sue directly pursuant to 42 U.S.C. §3612 or they may first complain to HUD pursuant to 42 U.S.C. §3610. Respondents brought their claims directly under §3612. Petitioners concede that under *Trafficante* these claims would be appropriate under §3610, but they argue that standing to sue under §3612 should be narrower than standing under §3610. The Court of Appeals correctly rejected this argument, which directly conflicts with the Supreme Court's decision in *Trafficante* and with the purpose and history of Title VIII.

Trafficante was decided under both §3610 and §3612. The original plaintiffs brought suit pursuant to §3610, §3612, and 42 U.S.C. §1982, alleging that their landlord's discriminatory practices interfered with their opportunity for interracial association and with the professional and social benefits of living in an integrated community. Complaints in intervention were filed by individual and organizational plaintiffs under §3612 and §1982. These intervening plaintiffs had not complained to HUD as had the original plaintiffs, and their only possible basis for standing under Title VIII was §3612. The District Court dismissed the action, holding that plaintiffs and plaintiffs in intervention lacked standing, and the Ninth Circuit affirmed. The Supreme Court granted certiorari, thereby accepting for review the question whether plaintiffs and intervenors

had standing. The Court unanimously held that they did. While explicitly stating that it was unnecessary to reach the question of standing under §1982 (409 U.S., at 209, n.8), this Court held that standing was present to assert all claims under Title VIII, which included claims under both §3610 and §3612. Had the Court intended to leave undecided the claims under §3612—the *only* claims under Title VIII that had been asserted by the plaintiffs in intervention—it would surely have included such a limitation in the footnote that excludes from consideration claims under §1982. Moreover, the paragraph of the Court's opinion that accords broad standing under Title VIII to persons complaining of injury to their opportunity for interracial association follows a discussion of Title VIII which explicitly recognizes the direct judicial remedy provided by §3612.

The reasoning that underlies the Supreme Court's decision in *Trafficante* applies in all respects to suits brought pursuant to §3612 as well as to those under §3610. With regard to enforcement of Title VIII, the Court concluded that:

> Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which, the Solicitor General says, the complainants act not only on their own behalf but also "as private attorneys general in vindicating a policy that Congress considered to be of the highest priority."

409 U.S., at 211. In view of the Court's references in *Trafficante* to the "enormity of the task of assuring fair housing" and to the Congressional intent "to replace the ghettos by truly integrated and balanced living patterns," petitioners' suggestion that §3612 should be narrowly con-

strued goes against the grain of the entire opinion. If the task is enormous and is to be primarily carried out by private litigants, it cannot be accomplished by reading narrowly the one section that deals solely with private litigation.

The legislative history of Title VIII contains no support for the claim that standing under §3612 was designed to be narrower than standing under §3610. Throughout the Congressional debates in 1966, 1967, and 1968 on a fair housing bill, the administrative and judicial remedies were described as being alternatives to one another against the same kinds of conduct and for the same kinds of complainants. See 569 F.2d, at 1019. Moreover, the legislative history shows that the words "person aggrieved" in §3610 were intended to limit standing, not to expand it, so that their omission from §3612 suggests at least equal standing to that accorded to complainants under §3610. See Remarks of Representative Cramer and Attorney General Katzenbach, Hearings on H.R. 3296, U.S. House of Representatives, Committee on the Judiciary, 89th Congress, 2nd Session (May 5, 1966), p. 1203. Thus, as the Court of Appeals noted, federal courts have responded to this clear Congressional mandate by holding in a variety of contexts that §3610 and §3612 provide for independent, alternative remedies, and, in particular, that there is no difference between the class of plaintiffs with standing to sue under §3612 and those with standing to sue under §3610. See 569 F.2d, at 1019 and cases cited.

III.

THE CONFLICT WITH TOPIC DOES NOT REQUIRE RESOLUTION BY THE SUPREME COURT.

The Ninth Circuit's decision in *TOPIC* is wrong. It conflicts with this Court's decision in *Trafficante* and with the clear purpose and history of Title VIII. It has been rejected not only by the Seventh Circuit here, but by numerous other federal courts as well. *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co., supra; Fair Housing Council of Bergen County* v. *Eastern Bergen County Multiple Listing Service, supra;* and see *Zuch* v. *Hussey, supra; Village of Park Forest* v. *Fairfax Realty,* P-H Eq. Opp. Hsing. Rptr. ¶13,699 (N.D. Ill. 1975) and P-H Eq. Opp. Hsing. Rptr. ¶13,784 (N.D. Ill. 1976); *Heights Community Congress* v. *Rosenblatt Realty, Inc.,* 73 F.R.D. 1 (N.D. Ohio 1975). Thus, whatever conflict there is between *TOPIC* and other decisions is being settled in the lower courts against the *TOPIC* position and is not likely to be of continuing significance. Full review in the Supreme Court is not necessary at this time.

In recent years, this Court has produced a number of decisions involving standing in fair housing cases. *E.g., Trafficante* v. *Metropolitan Life Insurance Co., supra; Warth* v. *Seldin, supra; Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977). The fact that a court of appeals occasionally applies one of these decisions improperly, as the Ninth Circuit did in *TOPIC,* is not sufficient ground to justify yet another full review of a case by the Supreme Court. With the decision below, the Seventh Circuit has joined the growing list of federal courts that have already repudiated *TOPIC,*

which is destined to fade as a precedent. In the unlikely event that another court of appeals ever decides to follow *TOPIC*, there will be time enough for this Court to step in and resolve the conflict.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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